IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.537 OF 2005

In the Matter of S.433, r/w. S. 434 of the Companies Act, 1956

And

In the matter of Nandan Petrochem Ltd.

Baijnath Plastic Products Pvt. Ltd. ..Petitioner.

Mr.Rajesh Datar with Mr.Oak for the Petitioner.

Mr.S.A.Diwan with Mr.Vivek Menon i/b.M/s.Mahesh Jani & Co. for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 23RD FEBRUARY, 2006

P.C. :

According to the Petitioner, the Company is indebted to it in the sum of Rs.11,57,899.63.

2. The amount arises on account of the goods sold and delivered by the Petitioner to M/s.Meguin Oil India Ltd., which is now merged with the Respondent Company. Admittedly, the liabilities of M/s.Meguin Oil India Ltd. had been taken over by the Respondent Company.

3. By a letter dated 18.5.2002 the Petitioner

requested the Company to confirm the balance as on 31.3.2002, to be Rs.7,54,536.29. The Company endorsed on the said letter that the account reconciliation had been given. The Company however endorsed that a sum of Rs.6,79,076/- was due and payable.

4. Mr.Diwan, the learned Senior Counsel appearing on behalf of the Company raised two defences.

5. Firstly, he submitted that the account was confirmed by one Pai, who was not authorised to do so. The account reconciliation was on 18.5.2002. According to Mr.Diwan, the said Pai resigned from the services of the Respondent Company on 17.5.2002. Admittedly, however, he was permitted to continue for a period of ten days. The only contention is that during this period of ten days the said Pai did not remain present.

6. It is pertinent to note however that apart from the defence regarding the goods being defective, there is nothing stated by the Respondent Company regarding the reconciliation of the accounts. There is no dispute that the goods were sold. There is no dispute that the goods were received. In these

circumstances, I find no reason to discard the reconciliation endorsed by the company on the letter dated 18.5.2002.

7. The other defence by the company is that the goods were defective. Two letters dated 15.9.2001 and 16.10.2001 contained allegations regarding dust particles which the company stated may create problems in the quality of the finished products. Admittedly, however, the goods were not rejected.

8. In the affidavit in reply it is also alleged that various debit notes had been raised. The debit notes had however not been annexed to the affidavit in reply. In the affidavit in rejoinder, the issue of the debit notes has been denied. There is no sur-rejoinder regarding the same.

In the circumstances, there does not appear to be any bona-fide dispute on the part of the company.

9. I, however, do not intend admitting the petition without affording the company an opportunity of paying the amount.

10. In the circumstances, the following order is

passed :

i) In the event of the Company paying to the Petitioners a sum of Rs.6,79,076/- on or before 20.4.2006, the Petition to stand dismissed.

ii) In case of failure on the part of the Company to deposit the aforesaid amount within time limit, the petition shall stand admitted and to be advertised in Free Press Journal, Navshakti and Maharashtra Government Gazette. The Petitioner to deposit an amount of Rs.2,000/- with Prothonotary and Senior Master of this Court within four weeks from the date of default.

This order is without prejudice to the rights of the Petitioners as regards interest.

All parties to act on a certified copy of this order.